**Subrecipient and Contractor Determinations** (2 CFR 200.330)

**Overview**

A non-Federal entity may receive awards as a recipient, subrecipient, and a contractor depending on its agreements with Federal awarding agencies and pass-through entities. Accurate classification of subrecipients and contractors is critical to the success of a program. Inaccurate classification could result in noncompliance with Federal awards and could ultimately result in agencies having to pay back Federal funds.

According to the Uniform Guidance, pass through entities must make case by case determinations for each entity receiving a subaward involving Federal funds, as to whether it is a subrecipient or a contractor. Following are the definitions and characteristics of subrecipients and contractors:

**Subrecipient**

*200.93 Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.*

The subaward is for the purpose of carrying out a portion of a federal award. Characteristics which support the classification of a subrecipient include when the non-Federal entity:

1. Determines who is eligible to receive what Federal assistance. For example:
   * Organization determines whether a potential customer meets a program’s eligibility requirements for assistance under that program.
2. Measures performance based on meeting objectives of Federal program. For example:
   * Awarding entity holds the organization responsible for meeting performance targets that are tied to program objectives.
   * Awarding entity holds the organization responsible for meeting expenditure targets to maximize the use of program funding.
   * Awarding entity requires organization to submit regular oral or written progress reports and/or explanations of variance relating to program objectives and/or fund maximization.
3. Is responsible for programmatic decision making. For example:
   * Organization makes policy and/operational decisions governing how it carries out a program.
   * Organization has latitude to make decisions within terms of the agreement.
   * Organization makes decisions regarding the appropriate assistance for a particular customer.
4. Is responsible for ensuring Federal requirements outlined in the award are followed. For example:
   * Awarding entity monitors the organization for compliance with applicable program and federal requirements.
   * Awarding entity holds the organization responsible for compliance with applicable program statutes, regulations, rules, policies, and guidance.
   * Organization receives technical assistance or training from the awarding entity relating to program requirements.
5. Uses the Federal funds to carry out a program of the organization as opposed to providing goods or services. For example:
   * Organization performs all or a portion of the scope of work or objectives of the award received by the awarding entity.
   * Organization’s role requires more than dealing, distributing, or selling goods or services that support a program.

**Contractor**

*200.23 Contractor means an entity that receives a contract as defined in 200.22 Contract.*

*200.22 Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award.*

The contract is for the purpose of obtaining goods and services for the non-federal entity’s own use and creates a procurement relationship with the contractor. Characteristics which support the classification of a contractor include when the non-Federal entity:

1. Provides the goods and services within normal business operations. For example:
   * Organization has its performance measured against whether it meets specific contract deliverables, rather than a program’s performance outcomes.
   * Organization receives little, if any, instruction from the awarding entity as to how the organization goes about producing the goods or services.
   * Organization invoices awarding entity in the organization’s normal way and is not required to submit a comprehensive closeout package at the end of the agreement.
2. Provides similar goods or services to many different purchasers. For example:
   * Organization provides similar goods or services to a number of entities in addition to the awarding entity.
   * Services provided are of a repetitive nature.
3. Normally operates in a competitive environment. For example:
   * Organization competes with other organizations to provide a similar good or service.
4. Provides goods or services that are ancillary to the operation of the Federal program. For example:
   * Organization provides a particular good or service that enables the awarding entity to operate (i.e. office supplies, janitorial services, equipment, staff development, printing, travel, etc.)
   * Organization aids or supports the program in a subsidiary capacity.
5. Is not subject to compliance requirements of the Federal program as a result of the agreement. For example:
   * Organization is not responsible for compliance with applicable program statutes, regulations, rules, policies or guidance.
   * Awarding entity does not provide the organization with technical assistance or training with regard to program requirements.
   * Awarding entity does not monitor the organization for compliance with program requirements.

**Substance over Form**

Determinations about whether an organization is a subrecipient or a contractor are not always straightforward. For example, no single factor alone will dictate the existence of one relationship over the other. The characteristics of the relationship as a whole must be examined to determine whether the arrangement has qualities that are more indicative of a subrecipient or a contractor.

CFR 200.330 (c) states:

*In determining whether an agreement between a pass through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.*